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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~324.~~ 97

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, COPARTNERS, TRADING AS POWERS & WEIGHTMAN, PLAINTIFFS IN ERROR,

vs.

SETH I. COMLY, COLLECTOR OF THE CUSTOMS FOR THE DISTRICT OF PHILADELPHIA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED JANUARY 24, 1877.

SUPREME COURT OF THE UNITED STATES.

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1 *Writ of error.*

UNITED STATES OF AMERICA, *set:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, plaintiffs, and Seth I. Comly, collector of the customs for the district of Philadelphia, defendant, in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said Thomas H. Powers and William Weightman, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid with all things concerning them and this writ so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirteenth day of November, A. D. one thousand eight hundred and seventy-six, and in the one hundred and first year of the Independence of the said United States.

SAMUEL BELL,
Clerk of Circuit Court U. S.

Allowed.

W. MCKENNAN,
Cir. Judge.

The return to the foregoing writ appears by the schedule hereto annexed.

SAMUEL BELL,
Clerk U. S. Cir. C't.

2 THOMAS H. POWERS AND WILLIAM Weightman, copartners, trading as Powers and Weightman
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia.
} Summons case.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss:

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1874, No. 88.

It is thus contained:

Be it remembered that on the twenty-second day of December, in the

year of our Lord one thousand eight hundred and seventy-four, William McMichael, esquire, district attorney of the United States for the eastern district of Pennsylvania, comes into court and presents the petition of
Seth I. Comly for the removal of the cause from the district court
3 for the city and county of Philadelphia, which said petition being filed is in the words and of the tenor following, to wit:

Petition for certiorari to the district court for the city and county of Philadelphia.

To the honorable the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit:

The petition of Seth I. Comly, collector of the customs for the district of Philadelphia, respectfully represents:

That a suit has been commenced by summons case against him as defendant by Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, plaintiffs, in the district court for the city and county of Philadelphia, in the State of Pennsylvania, to September term, 1874, No. 2561.

That the said suit is brought on account of an act done by him under the revenue laws of the United States as collector of customs for the
port of Philadelphia, the suit being to recover a certain sum of
4 money paid for and on account of the said plaintiffs to the said defendant, as collector aforesaid, as duties on certain merchandise.

He respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as in a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said district court to send to the said circuit court of the United States in and for the eastern district of Pennsylvania the record and proceedings in the said cause according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

S. I. COMLY,
Collector.

Seth I. Comly, being duly sworn, says that the facts set forth in the above petition are true to the best of his knowledge and belief.

S. I. COMLY.

Sworn and subscribed before me this 4th day of December, A. D. 1874.

W. GRIER HIBLER,
U. S. Commissioner.

5 I hereby certify that as counsel for the above petitioner I have examined the proceedings against him and carefully enquired into all the matters set forth in the above petition, and that I believe the same to be true.

WILLIAM McMICHAEL.

(Indorsed:) No. 88. Oct'r sess., 1874. C. C. U. S. E. D. of Pa. Powers & Weightman vs. Seth I. Comly, collector, &c. Petition for certiorari. Filed 22 December, 1874.

6 Which said petition having been filed, it was ordered by the court here that a writ of certiorari do immediately issue, directed

to the district court for the city and county of Philadelphia. Said writ was in the words following, to wit:

7 *Writ of certiorari.*

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct.:

The President of the United States, to the honorable the judges of the district court for the city and county of Philadelphia, greeting:

Whereas lately, in your said district court for the city and county of Philadelphia, suit was commenced by summons case against Seth I. Comly, collector of the customs for the district of Philadelphia, by Thomas H. Powers & William Weightman, co-partners trading as Powers & Weightman, to September term, 1874, No. 2561, which said suit, as it is said, is still pending before you in the said district court for the city and county of Philadelphia undetermined; and whereas on the application of the said Seth I. Comly, collector, &c., to the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, on a suggestion supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of the customs of the port of Philadelphia, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said Seth I. Comly, collector, &c., aforesaid, for duties on certain merchandise claimed to be due and owing from the saidplaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States, directed to the said district court to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provisions of the act of Congress in such case made and provided.

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, withall things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of April next, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief justice of the Supreme Court of the United States, at Philadelphia, this twenty-second day of December, A. D. 1874, and in the ninety-ninth year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court, U. S.

8 And afterwards, to wit, on the seventeenth day of February, A. D. 1875, the said writ of certiorari was returned into the said circuit court of the United States with the record and proceedings of the said district court for the city and county of Philadelphia annexed, which said return and record, being read, was as follows, to wit:

Record and proceedings of the district court for the city and county of Philadelphia.

To the honorable judges within named:

The record and proceedings within mentioned and all things touching the same we certify and send, together with this writ.

M. R. THAYER. [SEAL.]
AMOS BRIGGS. [SEAL.]

Among the records of the district court for the city and county of Philadelphia, of September term, A. D. 1874, No. 2561, the following is contained:

9 In the district court for the city and county of Philadelphia, of September term, 1874.

R. J. C. Walker.

THOMAS H. POWERS & WILLIAM WEIGHTMAN, Co-partners, trading as Powers & Weightman,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS OF the district of Philadelphia. } No. 2561.

McMichael, Nov. 9, '74.

Sum's case, exit Oct. 23, 1874. Ret. 1 Men. Nov., 1874, "served."

DEC. 26, '74—Certiorari from U. S. circuit court. E. D. of Penn'a brought into office.

Certified from the record this 2nd day of January, A. D. 1875.

[SEAL.] W. H. BENCKERT,
Pro Prothy.

10 CITY AND COUNTY OF PHILADELPHIA, *ss:*

The commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon Seth I. Comly, collector of customs for the port of Philadelphia, late of your county, so that he be and appear before our judges at Philadelphia, at our district court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of Nov'r next, there to answer Thomas H. Powers & William Weightman, co'p's, trading as Powers & Weightman, of a plea of trespass on the case, etc.

And have you then there this writ.

Witness the honorable J. I. Clark Hare, doctor of laws, president of our said court, at Philadelphia, the 23 day of Oct'r, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] J. C. ADDIS, JR.,
Pro Prothonotary.

11 Served by giving a true and attested copy of the within writ to Seth I. Comly, the def't, and making known to him the contents thereof Oct. 26, '74.

So answers—

W. B. SPOONER,
Dep't. Sheriff.
W. ELLIOTT, *Sheriff.*

(Indorsed:) 2561. Sep. term, 1874. Thos. H. Powers & al. vs. Seth I. Comly, collector of customs of the port of Philad'a. Summons case. R. J. C. Walker, W. Ernst.

12 *Rules on plaintiffs to declare.*

And afterwards, on the nineteenth day of February, A. D. 1875, the defendant, by William M. Michael, esquire, his attorney, comes into court here and enters a rule on the plaintiffs to declare in two weeks, or judgment sec. reg.

And afterwards, to wit, on the fifth day of March, A. D. 1875, the plaintiffs, by R. J. C. Walker and William Ernst, esquires, their attorneys, come into court here and file their narr in assumpsit, which, being read, is as follows, to wit:

13 *Narr.*

In the circuit court of the United States for the eastern district of Pennsylvania. Of October sessions, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, copartners, trading as Powers and Weightman, *vs.* SETH I. COMLY, COLLECTOR OF CUSTOMS FOR THE port of Philadelphia. } No. 88.

Seth I. Comly, collector of customs for the port of Philadelphia, was summoned to answer Thomas H. Powers and William Weightman, copartners, trading as Powers & Weightman, of a plea of trespass on the case, and thereupon the said plaintiffs, by R. J. C. Walker and William Ernst, their attorneys, complain:

14 For that whereas the said defendant, Seth I. Comly, collector as aforesaid, on the first day of October, in the year of our Lord one thousand eight hundred and seventy-four, to wit, at the county aforesaid, was indebted to the said plaintiffs, Powers & Weightman, in the sum of fifty thousand dollars, lawful money of the United States of America, for divers goods, wares, and merchandize, by the said plaintiffs to the said defendant before that time sold and delivered at his special instance and request.

And also, in the further sum of fifty thousand dollars, like money, for the work, labor, care, and diligence of the said plaintiffs by them before that time done, performed, and bestowed in and about the business of the said defendant, at his like special instance and request.

And also, in the further sum of fifty thousand dollars, like money, for so much money by the said plaintiffs before that time lent and advanced and paid, laid out and expended, to and for the use of the said defendant, and at his like instance and request.

And also, in the further sum of fifty thousand dollars, like money, for other money by the said defendant before that time had and received to and for the use of the said plaintiffs.

And also, in the further sum of fifty thousand dollars, like money, for so much money then and there found to be due and owing from the said defendant to the said plaintiffs, and in arrear and unpaid, upon an account then and there stated between them.

And being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, undertook and faithfully promised the said plaintiffs to pay them the said several sums of money in this count mentioned, when he, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant, not regarding his said several promises and undertakings, hath not paid the said several sums of money, or any of them, or any part thereof, to the said plaintiffs, although often requested so to do; but the said defendant hath hitherto neglected and refused, and still doth neglect and refuse to pay the same

to the said plaintiffs, to the damage of the said plaintiffs of one hundred thousand dollars, and therefore they bring suit, &c.

John Doe, Richard Roe, pledges, &c.

WILLIAM ERNST,
Attorney for the Plaintiffs.

MARCH 5, 1875.

To the clerk of the circuit court of the United States for the eastern district of Pensylvania.

15 (Indorsed:) 88. October, 1874. C. C. U. S. Powers & Weightman vs. Seth I. Comly, collector. Narr in assumpsit. Filed March 5, 1875. Ernst, Walker, for pl'ffs.

16 And afterwards, to wit, on the third day of March, A. D. 1876, the said defendant, Seth I. Comly, by John K. Valentine, esquire, his attorney, came into court here and filed his plea, which said plea is as follows, to wit:

Plea.

C. C. U. S., Oct. sess., 1874.

POWERS ET AL. *vs.* COMLY. } No. 88.

And the said defendant, by John K. Valentine, his attorney, comes and defends the wrong and injury, when, &c., and saith that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this he puts himself upon the country, &c.

JOHN K. VALENTINE,
Att'y for Def't.

17 (Indorsed:) 88. Oct. sess., 1874. Powers et al. vs. Comly. Plea. J. K. Valentine. Filed March 3, 1876.

Trial.

And afterwards, to wit, on the thirteenth day of April, A. D. 1876, this cause being now called for trial by order of the court, a jury being called came, to wit &c.

1. George K. Mecke.
2. Charles W. Newhouse.
3. Frederick Fox.
4. Jeremiah Mohler.
5. George W. Jones.
6. Abraham B. Long.
7. Edmund C. Bonsal.
8. Henry B. Talley.
9. John B. Holloway.
10. William A. Bosler.
11. William J. Burkhardt.
12. Martin S. Fry.

Who are respectively sworn or affirmed to try the issue joined and a true verdict render according to the evidence.

18 *Special verdict.*

And afterwards, to wit, on this day, the jurors aforesaid, on their

oaths or affirmations aforesaid, respectively do say that in the issue joined they find—

I. That the plaintiffs are citizens of the city of Philadelphia, where they conduct their business as manufacturing chemists.

II. That for the purposes of said business the plaintiffs import and use large quantities of opium.

III. That the plaintiffs imported into the port of Philadelphia, in the year 1874, from Liverpool, England, a place west of the Cape of Good Hope, certain opium, the growth or product of Persia, a country east of the Cape of Good Hope.

IV. That the opium was carried from Persia to England by way of the Isthmus of Suez and the Mediterranean Sea.

V. That the defendant, as collector of the port of Philadelphia, declined to deliver the said opium to the plaintiffs without first paying the additional duty of 10 per cent. imposed by section 2501 of the Revised Statutes and 3 section act of June 6th, 1872.

VI. That the plaintiffs duly protested against the payment of the said duty of ten per cent., and duly appealed from the decision of the collector, which appeal was duly referred to the Treasury Department of the United States, by which the decision of the collector was affirmed.

VII. That the said collector has collected from the plaintiffs, on certain opium imported by them in the manner above mentioned, the said additional duty of 10 per cent., amounting to $11,594.20, to recover which the plaintiffs have brought suit, within the proper period prescribed by law.

VIII. That the said jurors further say that they are ignorant, in point of law, on which side they ought, upon these facts, to find the issue; but that if the court shall be of opinion that the plaintiffs are entitled to recover the moneys thus paid as aforesaid to the defendant, or any part of it, then they find for the plaintiffs, and assess the damages at such sum as shall be equal to the money thus to be recovered, together with interest at the rate of six per cent. per annum (in gold) from the dates of payments; but that if the court shall be of opinion that the plaintiffs are not entitled to recover the said moneys, or any part thereof, then they find for the defendant.

19 Whereupon afterward, to wit, on the fourteenth day of October, A. D. 1876, before the honorable William M. Kennan, judge of the said circuit court, this cause came on to be heard on motion for judgment on special verdict, and the court having heard the argument of William Ernst and Henry Flanders, esquires, counsel for plaintiffs, and John K. Valentine, esquire, counsel for the defendant, takes the same under advisement.

Judgment on special verdict.

And afterwards, to wit, on the twenty-sixth day of October, A. D. 1876, the premises being seen and fully understood by the court here, and mature deliberation being had thereon, it is ordered that judgment be entered on the special verdict in favor of the defendant.

20 And afterwards, to wit, on the fifteenth day of December, A. D. 1876, came again the said plaintiffs, Thomas H. Powers and William Weightman, by their said attorneys, William Ernst and Henry Flanders, esquires, and filed in the clerk's office of said court their bond herein, which said bond is in the words following, to wit:

Bond sur writ of error.

In the circuit court of the United States in and for the eastern district of Pennsylvania. October session, 1874.

THOMAS H. POWERS AND WILLIAM WEIGHTMAN, co-partners, trading as Powers and Weightman,
vs.
SETH I. COMLY, COLLECTOR OF THE CUSTOMS for the district of Philadelphia.
No. 88.

Know all men by these presents that we, Thomas H. Powers and William Weightman, as principals, and John F. Weightman and William Weightman, jr., all of the city of Philadelphia, as sure-
21 ties, are firmly bound unto Seth I. Comly, collector of the customs for the district of Philadelphia, in the sum of five hundred dollars, lawful money of the United States of America, to which payment well and truly to be made we do bind and oblige ourselves, our heirs, executors, and administrators, and every of them, jointly and severally, firmly by these presents, sealed with our seals, dated this eighth day of December, anno Domini one thousand eight hundred and seventy-six (1876).

Whereas in the above-entitled suit a judgment was rendered against the above-named plaintiffs, Thomas H. Powers and William Weightman, which judgment a writ of error from the Supreme Court of the United States has been obtained by the said Thomas H. Powers and William Weightman, the same being returnable to the second Monday of October, A. D. 1877:

Now, the condition of this obligation is such that if the said Thomas H. Powers and William Weightman shall prosecute the said writ
22 of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

THOMAS H. POWERS. [SEAL.]
WILLIAM WEIGHTMAN. [SEAL.]
JOHN F. WEIGHTMAN. [SEAL.]
WM. WEIGHTMAN, JR. [SEAL.]

Sealed and delivered in the presence of us—
SAMUEL BELL.
W'M ERNST.

(Indorsed:) No. 88. October, 1874. Cir. ct. U. S., E. D. of Pa. Powers et al. vs. Comly. Bond sur writ of error. Approved. W. McKennan. Filed Dec'r 15, 1876.

23 *Citation sur writ of error.*

The United States of America to Seth I. Comly, collector of the customs for the district of Philadelphia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant of a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein Thomas H. Powers and William Weightman are plaintiffs in error and you are defendant in

error, to show cause, if any there be, why judgment rendered against said plaintiffs in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand this 15th day of December, in the year of our Lord one thousand eight hundred and seventy-six.

W. McKENNAN, *Cir. Judge.*

24 Service accepted for defendant.

JOHN K. VALENTINE,
Att'y for Defendant.

12, 18, '76.

(Indorsed:) No. 88. October sess., 1874. Cir. c't U. S., e. d. of Pa. Powers et al. vs. Comly. Citation sur writ of error. Returned Dec'r 18, 1876.

25 *Assignments of error.*

In the Supreme Court of the United States, of October term, 1877.

THOMAS H. POWERS & WILLIAM WEIGHTMAN, trading as Powers & Weightman, pl'ffs in error,
vs.
SETH I. COMLY, COLLECTOR OF CUSTOMS OF the port of Philadelphia, Pennsylvania, def't in error. } No.

Sur writ of error to the circuit court of the United States for the eastern district of Pennsylvania, of October sessions 1874, No. 88.

Assignment of error.

The plaintiffs in error file the following assignment of errors:

That the learned (circuit) court erred in entering judgment for the defendant below on the special verdict as found by the jury.

R. J. C. WALKER,
WILLIAM ERNST,
HENRY FLANDERS,
Of Counsel for Pl'ffs.

To the hon. the clerk of the Supreme Court of the United States, Washington, D. C.

26 *Certificate of clerk.*

Circuit court of the United States, eastern district of Pennsylvania, ss:

I, Samuel Bell, clerk of the circuit court of the United States for the eastern district of Pennsylvania, do hereby certify the foregoing to be a true and complete copy of all the papers filed, proceedings therein had, and process issued in a certain cause, wherein Thomas H. Powers and William Weightman, copartners, trading as Powers and Weightman, are plaintiffs, and Seth I. Comly, collector of the customs for the district of Philadelphia, is defendant, as the same appear of file and record in my said office.

In witness whereof I have hereunto set my hand and seal of said court at my office in the city of Philadelphia, in said district, this eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-seven, and of our Independence the one hundred and first.

[SEAL.] SAMUEL BELL, *Clerk.*

(Indorsement on cover:) No. 324. Thomas H. Powers and William Weightman, copartners trading as Powers & Weightman, plaintiffs in error vs. Seth I. Comly, collector of the customs for the district of Philadelphia. E. Pennsylvania C. C. U. S. Filed 24th January, 1877.